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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

HB SURGICAL ARTS LLC,
Plaintiff,

v.

CIGNA HEALTH AND LIFE
INSURANCE COMPANY,
CONNECTICUT GENERAL LIFE
INSURANCE COMPANY, and
DOES 1-100.

Defendants.

Case No. 8:23-cv-00426-FWS-DFM
[Hon. Fred W. Slaughter]

PROTECTIVE ORDER

**[DISCOVERY MATTER: Referred
to Magistrate Judge Douglas F.
McCormick]**

Action filed: March 9, 2023

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1 1. INTRODUCTION

2 1.1 PURPOSES AND LIMITATIONS

3 Discovery in this action may involve production of confidential, proprietary,
4 or private information for which special protection from public disclosure and from
5 use for any purpose other than prosecuting this litigation may be warranted.

6 Accordingly, the Parties hereby stipulate to and petition the Court to enter the
7 following Stipulated Protective Order. The Parties acknowledge that this Order
8 does not confer blanket protections on all disclosures or responses to discovery and
9 that the protection it affords from public disclosure and use extends only to the
10 limited information or items that are entitled to confidential treatment under the
11 applicable legal principles. The Parties further acknowledge, as set forth in
12 Section 12.3 below, that this Order does not entitle them to file Confidential
13 Information under seal; Civil Local Rule 79-5 sets forth the procedures that must
14 be followed and the standards that will be applied when a Party seeks permission
15 from the Court to file material under seal.

16 1.2 GOOD CAUSE STATEMENT

17 This action involves a health care provider, a health benefits administrator,
18 and a managed healthcare benefits plan. As such, discovery is likely to involve
19 trade secrets, contracts including pricing information, patient health information
20 protected by the Health Insurance Portability and Accountability Act (“HIPAA”),
21 and other valuable commercial, financial, and/or proprietary information for which
22 special protection from public disclosure and from use for any purpose other than
23 prosecution of this action is warranted. Such confidential and proprietary materials
24 and information consist of, among other things, confidential business or financial
25 information, information regarding confidential business practices, or other
26 confidential commercial information (including information implicating privacy
27 rights of third parties), confidential patient health information, information
28 otherwise generally unavailable to the public, or which may be privileged or

1 otherwise protected from disclosure under state or federal statutes, court rules, case
2 decisions, or common law. Accordingly, to expedite the flow of information, to
3 facilitate the prompt resolution of disputes over confidentiality of discovery
4 materials, to adequately protect information the parties are entitled to keep
5 confidential, to ensure that the parties are permitted reasonable necessary uses of
6 such material in preparation for and in the conduct of trial, to address their
7 handling at the end of the litigation, and serve the ends of justice, a protective order
8 for such information is justified in this matter. It is the intent of the parties that
9 information will not be designated as confidential for tactical reasons and that
10 nothing be so designated without a good faith belief that it has been maintained in
11 a confidential, non-public manner, and there is good cause why it should not be
12 part of the public record of this case.

13 2. DEFINITIONS

14 2.1 Action: HB Surgical Arts, LLC. et al. v. Cigna Health and Life
15 Insurance Company, et al. (Case No. 8:23-cv-00426-FWS-DFM).

16 2.2 Challenging Party: A Party or Nonparty that challenges the
17 designation of information or items under this Order.

18 2.3 “CONFIDENTIAL” Information or Items: Information (regardless of
19 how it is generated, stored, or maintained) or tangible things that qualify for
20 protection under Federal Rule of Civil Procedure 26(c) and as specified above in
21 the Good Cause Statement.

22 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
23 their support staff).

24 2.5 Designating Party: A Party or Nonparty that designates information or
25 items that it produces in disclosures or in responses to discovery as
26 “CONFIDENTIAL.”

27 2.6 Disclosure or Discovery Material: All items or information, regardless
28 of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced
2 or generated in disclosures or responses to discovery in this matter.

3 2.7 Expert: A person with specialized knowledge or experience in a
4 matter pertinent to the litigation who has been retained by a Party or its counsel to
5 serve as an expert witness or as a consultant in this action.

6 2.8 House Counsel: Attorneys who are employees of a Party to this
7 Action. House Counsel does not include Outside Counsel of Record or any other
8 outside counsel.

9 2.9 Nonparty: Any natural person, partnership, corporation, association,
10 or other legal entity not named as a Party to this action.

11 2.10 Outside Counsel of Record: Attorneys who are not employees of a
12 Party to this Action but are retained to represent or advise a Party and have
13 appeared in this Action on behalf of that Party or are affiliated with a law firm that
14 has appeared on behalf of that Party, including support staff.

15 2.11 Party: Any Party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.12 Producing Party: A Party or Nonparty that produces Disclosure or
19 Discovery Material in this Action.

20 2.13 Professional Vendors: Persons or entities that provide litigation
21 support services (for example, photocopying, videotaping, translating, preparing
22 exhibits or demonstrations, and organizing, storing, or retrieving data in any form
23 or medium) and their employees and subcontractors.

24 2.14 Protected Material: Any Disclosure or Discovery Material that is
25 designated as “CONFIDENTIAL.”

26 2.15 Receiving Party: A Party that receives Disclosure or Discovery
27 Material from a Producing Party.

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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above) but also any information copied or extracted
4 from Protected Material; all copies, excerpts, summaries, or compilations of
5 Protected Material; and any testimony, conversations, or presentations by Parties
6 or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial will be governed by the orders of the
8 trial judge. This Order does not govern the use of Protected Material at trial.

9 4. DURATION

10 Even after final disposition of this litigation, the confidentiality obligations
11 imposed by this Order will remain in effect until a Designating Party agrees
12 otherwise in writing or a court order otherwise directs. Final disposition is the later
13 of (1) dismissal of all claims and defenses in this Action, with or without prejudice,
14 or (2) final judgment after the completion and exhaustion of all appeals,
15 rehearings, remands, trials, or reviews of this Action, including the time limits for
16 filing any motions or applications for extension of time under applicable law.

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Each Party or Nonparty that designates information or items for
19 protection under this Order must take care to limit any such designation to specific
20 material that qualifies under the appropriate standards. The Designating Party
21 must designate for protection only those parts of material, documents, items, or
22 oral or written communications that qualify so that other portions of the material,
23 documents, items, or communications for which protection is not warranted are not
24 swept unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited.
26 Designations that are shown to be clearly unjustified or that have been made for an
27 improper purpose (for example, to unnecessarily encumber the case-development
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1 process or to impose unnecessary expenses and burdens on other parties) may
2 expose the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items it
4 designated for protection do not qualify for that level of protection, that
5 Designating Party must promptly notify all other Parties that it is withdrawing the
6 inapplicable designation.

7 5.2 Except as otherwise provided in this Order, Disclosure or Discovery
8 Material that qualifies for protection under this Order must be clearly so designated
9 before the material is disclosed or produced.

10 Designation in conformity with this Order requires the following:

11 (a) for information in documentary form (for example, paper or electronic
12 documents but excluding transcripts of depositions or other pretrial or trial
13 proceedings), the Producing Party must affix at a minimum the legend
14 "CONFIDENTIAL" to each page that contains Protected Material. If only a
15 portion or portions of the material on a page qualify for protection, the Producing
16 Party must clearly identify the protected portion(s) (for example, by making
17 appropriate markings in the margins).

18 A Party or Nonparty that makes original documents available for inspection
19 need not designate them for protection until after the inspecting Party has indicated
20 which documents it would like copied and produced. During the inspection and
21 before the designation, all material made available for inspection must be treated as
22 "CONFIDENTIAL." After the inspecting Party has identified the documents it
23 wants copied and produced, the Producing Party must determine which documents,
24 or portions thereof, qualify for protection under this Order. Then, before
25 producing the specified documents, the Producing Party must affix the
26 "CONFIDENTIAL" legend to each page that contains Protected Material. If only
27 a portion or portions of the material on a page qualify for protection, the Producing
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1 Party also must clearly identify the protected portion(s) (for example, by making
2 appropriate markings in the margins).

3 (b) for testimony given in depositions, the Designating Party must identify
4 the Disclosure or Discovery Material that is protected on the record, before the
5 close of the deposition.

6 (c) for information produced in some form other than documentary and for
7 any other tangible items, the Producing Party must affix in a prominent place on
8 the exterior of the container or containers in which the information is stored the
9 legend “CONFIDENTIAL.” If only a portion or portions of the information
10 warrant protection, the Producing Party, to the extent practicable, must identify the
11 protected portion(s).

12 5.3 If timely corrected, an inadvertent failure to designate qualified
13 information or items does not, standing alone, waive the Designating Party’s right
14 to secure protection under this Order for that material. On timely correction of a
15 designation, the Receiving Party must make reasonable efforts to assure that the
16 material is treated in accordance with the provisions of this Order.

17 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 6.1 Any Party or Nonparty may challenge a designation of confidentiality
19 at any time consistent with the Court’s scheduling order.

20 6.2 The Challenging Party must initiate the dispute-resolution process
21 (and, if necessary, file a discovery motion) under Local Rule 37.

22 6.3 The burden of persuasion in any such proceeding is on the
23 Designating Party. Frivolous challenges, and those made for an improper purpose
24 (for example, to harass or impose unnecessary expenses and burdens on other
25 parties), may expose the Challenging Party to sanctions. Unless the Designating
26 Party has waived or withdrawn the confidentiality designation, all parties must
27 continue to afford the material in question the level of protection to which it is
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1 entitled under the Producing Party's designation until the Court rules on the
2 challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 A Receiving Party may use Protected Material that is disclosed or
5 produced by another Party or by a Nonparty in connection with this Action only
6 for prosecuting, defending, or attempting to settle this Action. Such Protected
7 Material may be disclosed only to the categories of people and under the
8 conditions described in this Order. When the Action has been terminated, a
9 Receiving Party must comply with the provisions of Section 13 below (FINAL
10 DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a
12 location and in a manner sufficiently secure to ensure that access is limited to the
13 people authorized under this Order.

14 7.2 Unless otherwise ordered by the Court or permitted in writing by the
15 Designating Party, a Receiving Party may disclose any information or item
16 designated "CONFIDENTIAL" only to the following people:

17 (a) the Receiving Party's Outside Counsel of Record in this Action, as
18 well as employees of that Outside Counsel of Record to whom it is reasonably
19 necessary to disclose the information for this Action;

20 (b) the officers, directors, and employees (including House Counsel) of
21 the Receiving Party to whom disclosure is reasonably necessary for this Action;

22 (c) Experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this Action and who have signed the
24 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

25 (d) the Court and its personnel;

26 (e) court reporters and their staff;

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1 (f) professional jury or trial consultants, mock jurors, and Professional
2 Vendors to whom disclosure is reasonably necessary for this Action and who have
3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (g) the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information;

6 (h) during their depositions, witnesses and attorneys for witnesses to
7 whom disclosure is reasonably necessary, provided that the deposing party requests
8 that the witness sign the form attached as Exhibit A hereto and the witnesses will
9 not be permitted to keep any confidential information unless they sign the form,
10 unless otherwise agreed by the Designating Party or ordered by the Court. Pages
11 of transcribed deposition testimony or exhibits to depositions that reveal Protected
12 Material may be separately bound by the court reporter and may not be disclosed
13 to anyone except as permitted under this Order; and

14 (i) any mediator or settlement officer, and their supporting personnel,
15 mutually agreed on by any of the Parties engaged in settlement discussions or
16 appointed by the Court.

17 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
18 **IN OTHER LITIGATION**

19 If a Party is served with a subpoena or a court order issued in other litigation
20 that compels disclosure of any information or items designated in this Action as
21 “CONFIDENTIAL,” that Party must

22 (a) promptly notify in writing the Designating Party. Such notification
23 must include a copy of the subpoena or court order unless prohibited by law;

24 (b) promptly notify in writing the party who caused the subpoena or
25 order to issue in the other litigation that some or all of the material covered by the
26 subpoena or order is subject to this Protective Order. Such notification must
27 include a copy of this Order; and

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1 (c) cooperate with respect to all reasonable procedures sought to be
2 pursued by the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served
4 with the subpoena or court order should not produce any information designated in
5 this action as “CONFIDENTIAL” before a determination on the protective-order
6 request by the relevant court unless the Party has obtained the Designating Party’s
7 permission. The Designating Party bears the burden and expense of seeking
8 protection of its Confidential Material, and nothing in these provisions should be
9 construed as authorizing or encouraging a Receiving Party in this Action to
10 disobey a lawful directive from another court.

11 9. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE
12 PRODUCED IN THIS LITIGATION

13 (a) The terms of this Order are applicable to information produced by a
14 Nonparty in this Action and designated as “CONFIDENTIAL.” Such information
15 is protected by the remedies and relief provided by this Order. Nothing in these
16 provisions should be construed as prohibiting a Nonparty from seeking additional
17 protections.

18 (b) In the event that a Party is required by a valid discovery request to
19 produce a Nonparty’s Confidential Information in its possession and the Party is
20 subject to an agreement with the Nonparty not to produce the Nonparty’s
21 Confidential Information, then the Party must

22 (1) promptly notify in writing the Requesting Party and the Nonparty
23 that some or all of the information requested is subject to a confidentiality
24 agreement with a Nonparty;

25 (2) promptly provide the Nonparty with a copy of this Order, the
26 relevant discovery request(s), and a reasonably specific description of the
27 information requested; and

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(3) make the information requested available for inspection by the Nonparty, if requested.

(c) If the Nonparty fails to seek a protective order within 21 days of receiving the notice and accompanying information, the Receiving Party may produce the Nonparty's Confidential Information responsive to the discovery request. If the Nonparty timely seeks a protective order, the Receiving Party must not produce any information in its possession or control that is subject to the confidentiality agreement with the Nonparty before a ruling on the protective-order request. Absent a court order to the contrary, the Nonparty must bear the burden and expense of seeking protection of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately notify the Designating Party in writing of the unauthorized disclosures, use its best efforts to retrieve all unauthorized copies of the Protected Material, inform the person or people to whom unauthorized disclosures were made of the terms of this Order, and ask that person or people to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

12. MISCELLANEOUS

12.1 Nothing in this Order abridges the right of any person to seek its modification by the Court.

1 12.2 By stipulating to the entry of this Order, no Party waives any right it
2 otherwise would have to object to disclosing or producing any information or item
3 on any ground not addressed in this Order. Similarly, no Party waives any right to
4 object on any ground to use in evidence of any of the material covered by this
5 Order.

6 12.3 A Party that seeks to file under seal any Protected Material must
7 comply with Civil Local Rule 79-5. Protected Material may be filed under seal
8 only pursuant to a court order authorizing the sealing of the specific Protected
9 Material at issue. If a Party's request to file Protected Material under seal is
10 denied, then the Receiving Party may file the information in the public record
11 unless otherwise instructed by the Court.

12 13. FINAL DISPOSITION

13 After the final disposition of this Action, as defined in paragraph 4, within
14 60 days of a written request by the Designating Party, each Receiving Party must
15 return all Protected Material to the Producing Party or destroy such material. As
16 used in this subdivision, "all Protected Material" includes all copies, abstracts,
17 compilations, summaries, and any other format reproducing or capturing any of the
18 Protected Material. Whether the Protected Material is returned or destroyed, the
19 Receiving Party must submit a written certification to the Producing Party (and, if
20 not the same person or entity, to the Designating Party) by the 60-day deadline that
21 identifies (by category, when appropriate) all the Protected Material that was
22 returned or destroyed and affirms that the Receiving Party has not retained any
23 copies, abstracts, compilations, summaries, or any other format reproducing or
24 capturing any of the Protected Material. Notwithstanding this provision, Counsel
25 are entitled to retain an archival copy of all pleadings; motion papers; trial,
26 deposition, and hearing transcripts; legal memoranda; correspondence; deposition
27 and trial exhibits; expert reports; attorney work product; and consultant and expert
28 work product even if such materials contain Protected Material. Any such archival

1 copies that contain or constitute Protected Material remain subject to this Order as
2 set forth in Section 4 (DURATION).

3 **14. SANCTIONS**

4 Any willful violation of this Order may be punished by civil or criminal
5 contempt, financial or evidentiary sanctions, reference to disciplinary authorities,
6 or other appropriate action at the discretion of the Court.

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9 **IT IS SO ORDERED.**

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11 DATED: May 26, 203

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14 Douglas F. McCormick
15 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of _____
[full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the U.S. District
Court for the Central District of California on _____ [date] in the case of
_____ [insert case name and number]. I agree to comply with and to be
bound by all terms of this Stipulated Protective Order, and I understand and
acknowledge that failure to so comply could expose me to sanctions and
punishment, including contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Stipulated Protective Order
to any person or entity except in strict compliance with the provisions of this
Order.

15 I further agree to submit to the jurisdiction of the U.S. District Court for the
16 Central District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action. I hereby appoint _____ [full
19 name] of _____ [full address and
20 telephone number] as my California agent for service of process in connection
21 with this action or any proceedings related to enforcement of this Stipulated
22 Protective Order.

23 | Date:

24 | City and State where signed:

25 Printed name:

26 | Signature:

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